

## **Case Research**



**TIME TO VOTE Best of Scottsdale**  
Voting ends Nov. 8 / [Scottsdale.org](http://Scottsdale.org)



**Sustainable and  
artistic wonder** / P. 42

# SCOTTSDALE PROGRESS

YOUR HOMETOWN NEWSPAPER

An edition of the East Valley Tribune

FREE (\$1 OUTSIDE OF SCOTTSDALE) | [scottsdale.org](http://scottsdale.org)

Sunday, November 3, 2019

## Pot shop now needs 5-member Council OK

BY WAYNE SCHUTSKY  
Progress Managing Editor

A proposed downtown Scottsdale medical marijuana dispensary will need the support of a supermajority of city council, after opponents employed a little-known legal mechanism to challenge the project.

Zoning and conditional use permit applications for the Sunday Goods dispensary will go before the Scottsdale City Council Nov. 12.

Sunday Goods is seeking to rezone a building currently housing a tattoo parlor near the Galleria Corporate Centre.

The opponents – local property owners who continue to raise questions about whether or not the Sunday Goods dispensary project complies with city and state regulations – filed a legal protest with the city on Sept. 27, citing A.R.S. §9-462.04.

The state law allows 20 percent or more of area property owners to protest proposed zoning amendments.

"If the owners of twenty percent or more of the property, by area and number of lots file a protest in writing against a proposed amendment, the change shall not become effective except by the favorable vote of three-fourths of all members of the governing body of the municipality," according to the statute.

Scottsdale's current Planning Director, Tim Curtis, said city staff determined the

SEE **DISPENSARY** PAGE 12



tions but not mixed-use districts.

"So, there wasn't a separation requirement from the mixed-use districts, just from the residential districts," Curtis said.

Spiro also argued the proposed Sunday Goods is too close to a park - the Soleri Bridge and Plaza on the west side of Scottsdale Road.

City staff disagreed.

Curtis said the Soleri Plaza is considered open space and a canal front but is not designated a park. Spiro argued if the city is maintaining the property, it should qualify as a park.

Dan Worth, Scottsdale's public works executive director, confirmed last year the city parks department maintains landscaping and irrigation at the plaza.

Jason Morris, a zoning attorney for Sunday Goods, said the city has not, to this point, treated Soleri Plaza as a park as it relates to other uses downtown.

Facing push back from city staff, Spiro's group began meeting with council members.

Curtis acknowledged council "could feel differently from staff."

"Now, these are just legal processing questions; politically, any of the council members could find discomfort in any of these issues," Curtis said.

Though much of its opposition is on procedural grounds, Spiro and his group are also planning an ad blitz opposing medical marijuana as a use - which was legalized in Arizona almost a decade ago - with flyers reading "Keep Old Town Family-Friendly", "No Pot in Old Town" and "Keep Old Town Drug-Free."

The dispensary could run into trouble when it asks the state to approve its final license.

Sunday Goods will still have to go back to the state to receive its license if the City Council approves the permit and zoning.

"To get a full license, there's a two-step process," former DHS Director Will Humble told Cronkite News in 2016. "Number one, you get a registration certificate, which gives you a year's time to get all your zoning documentation in order. At the end of the final inspection, you have a license and can sell."

When Sunday Goods goes back to the state, it will have to demonstrate it complies with all state separation requirements and other rules.

The proposed Sunday Goods site is currently located within 500 feet of the Perform to Learn preschool and Coda-Kid, a coding academy offering summer

**OPEN**  
**LOSE**  
**nteed**

**DAY!**  
**8114**  
**an Fix Anything!**

**\$75 0**  
**A Pair of Sp**

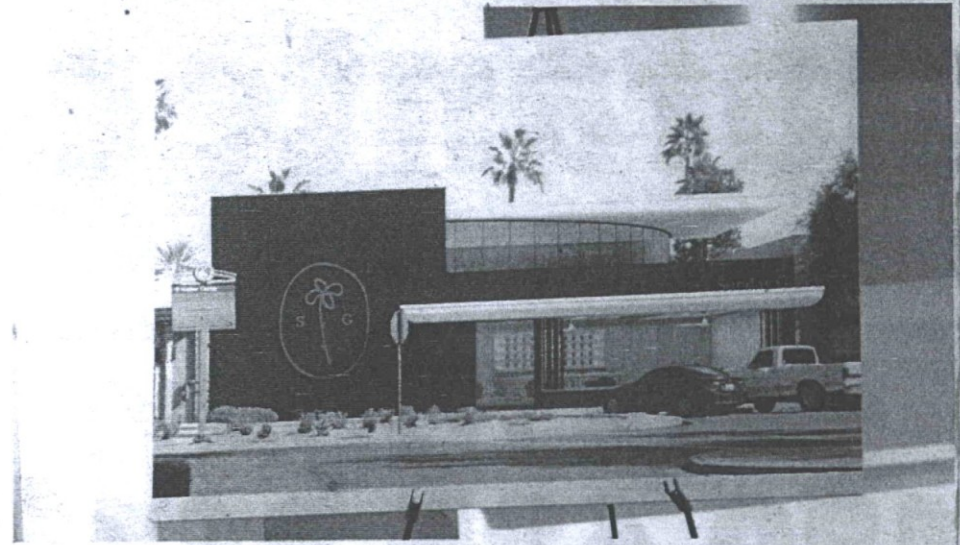
With coupon only. May not be combined with other offers

**ft Maste**  
**age**  
**r**  
**ner**  
**\$320**





This old tattoo shop would be replaced by a dispensary if Sunday Goods gets Council's approval (Progress file photo)



Sunday Goods would become the first medical marijuana dispensary in downtown Scottsdale. (File photo)

Scottsdale. The nearest dispensary in the city is near Via de Ventura and Pima Road.

Cardholders in downtown Scottsdale and areas farther south must commute at least six miles to location or other dispensaries in Phoenix and Tempe.

"That's a nuisance when you're not feeling well," said Thomas Lovell, a Scottsdale resident with cancer who uses medical marijuana.

But Spiro and his group argue the area around the business is not the right place for the development, saying the presence of marijuana could hurt them.

Sunday Goods backers received a state certificate to open a dispensary in southern Scottsdale in 2017, but is unable to find a location meeting all city and state laws prohibiting dispensaries from close proximity to schools, churches, parks and residential properties.

Scottsdale beefed up its separation requirements in 2016, requiring dispensaries to be 1,500 feet from protected residential uses, parks and churches. Arizona requires dispensaries to be 500

feet from schools.

At an earlier public meeting, representatives for the dispensary said a small triangle of buildings in the area around the proposed site were the only areas in the southern Scottsdale area where they are authorized by the state to open a dispensary and complied with all separation requirements.

Spiro disagreed, arguing the current site also fails to meet several requirements.

Spiro pointed to three residential projects within 1,000 feet of the site - the 3rd Avenue Lofts, San Marin Luxury Apartments and The Stetson apartment complex.

However, Curtis said those complexes do not qualify as protected residential uses because they are located in mixed-use districts.

The original city ordinance passed in 2011, only protected single-family, two-family and manufactured housing residential districts. In 2012, the Council increased residential protections to include some multifamily zoning designa-



## DISPENSARY FROM FRONT

protest was valid.

That means five of the seven council members must approve the zoning application rather than four.

The protest applies only to the dispensary's zoning amendment request and not the concurrent conditional use permit application.

Scottsdale requires all dispensaries in the city to obtain a conditional use permit. Many other Valley cities eliminated the requirement in favor of an administrative process allowing city staff to approve dispensaries.

Denial of the zoning request would effectively kill the dispensary regardless of council's decision on the permit.

That is because the proposed site, currently a tattoo parlor, is zoned C-2 commercial, which does not permit medical marijuana dispensaries.

The protest is the latest volley by dispensary's opponents, who fear it would hamper plans to assemble parcels to build a tall, mixed-use residential and retail building on the block in the future.

"Ultimately, it is small business owners like (CodaKid owner David Dodge) and myself, like all of us, that end up having to fight and fund the fight," property owner and architect Daniel Spiro said.

Spiro is part of a group of neighboring property owners who plan their own development.

The Progress confirmed the group includes Spiro, Dodge and Gary Bohall, who all own buildings on the west side of Brown Avenue, which shares an alleyway with the dispensary.

Janet Wilson, who owns four parcels on the east side of Brown Avenue, is also a part of the group.

Spiro said the proposed dispensary's two-story design and the new zoning height limitations would make it difficult to attract a development partner for their proposed taller development.

He argued the city should not "spot zone" one building on the block just to allow the dispensary to move in.

Under existing C-2 zoning in the area, Spiro and his group could construct a building up to 60 feet tall. It could potentially go up to 90 feet under rules passed by city council in 2018, if the group meets certain city requirements.

Jason Rose, a spokesperson for the dispensary, said it asked for a delay of the Council hearing, originally scheduled for Oct. 3, to address the property owners'

Doo

Doo

Guar

CAL

480.

Free Phone Qu

FREE Service Ca

(with repair)

\$65 Value!

21-Point Safety Inspection

- With coupon only. May not be combined with other offers. Exp. December



A-Authen

Garage Door Servic

ArizonaGarageDoor



## DISPENSARY FROM PAGE 12

camps and other programs.

Rose said Sunday Goods has a contract with the preschool owner to relocate it, before the dispensary opens.

The city also has a letter dated September 2018, from McCartney K. Hart, owner of the Perform to Learn preschool, stating she "will cease operations prior to, or contemporaneous with" the dispensary's permit application.

"Obviously, Sunday Goods cannot open unless and until (the preschool moves) per the contract," Rose said.

City staff agreed.

Curtis said even if council approves the conditional-use permit, the city will not sign off on the resolution if the preschool doesn't move.

"So, we're putting everybody on notice that this is a conflict right now and if it doesn't get resolved, they'll never be able to operate their Sunday Goods," Curtis said.

The CodaKid question is trickier as it is unclear if the business qualifies as a school under state separation rules.

Owner David Dodge said he believes his business qualifies as a school under the state definition.

The state only defines a private school as "a nonpublic institution where instruction is imparted," according to statute.

"We have a variety of different programs that we run but throughout the year, we have thousands of students that attend," Dodge said.

Morris argued that CodaKid is more akin to a violin instructor than a school and that the state will defer to the city's definition of a school.

Under a revision passed by City Council in 2012, the definition of a "school" was clarified to include only kindergarten through 12th-grade schools, according to a City Council

memo.

The Arizona Department of Health did not respond to a request for comment as to whether CodaKid qualifies as a private school under state rules.

Whether or not the dispensary complies with state separation requirements did not affect Scottsdale city staff's recommendation for approving the Sunday Goods project.

"That's just up to the state level, so they're going to have their own issues with the state," Curtis said.

Another state issue that could derail the dispensary involves parking requirements.

The Arizona Administrative Code states, "A dispensary shall provide on-site parking or parking adjacent to the building used as the dispensary."

The most recent application on file with the city calls for three parking spaces on-site with an additional five "in-lieu" spaces, according to a Council memo.

Through the in-lieu parking program, property owners in downtown Scottsdale can pay a fee instead of providing the required on-site parking.

Wilson, another area property owner, said the current plan would further exacerbate an existing parking shortage in the area that hurts her tenants' businesses.

"The city is letting them have three parking places out in front of their business and five in lieu, which means it's in never-never land," Wilson said.

Morris disagreed, once again contending the state will defer to the city to determine what amount of on-site parking is adequate.

Curtis said city staff only considers city regulations when looking at an application.

"That's a state requirement," Curtis said of the on-site parking rule, stating that using in-lieu parking is permissible under city rules.